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JOHN D FLYNN 972 B656 IBM CORPORATION PO BOX 12195 RESEARCH TRIANGLE PARK, NC 27709			VU, THONG H	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 21

Application Number: 08/883,710

Filing Date: June 27, 1997

Appellant(s): WALKER, ANTHONY DEAN

Robert A. Voigt, Jr
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/02/2001.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant has chosen to group the claims into 4 groups:

Claims 1,5 and 6 form a first group.

Claims 2 and 4 form a second group.

Claims 7,14 and 15 form a third group.

Claims 3,8,9,10,11,12,13,16,17,18 and 19 should not be group together and should be considered separately.

(8) ClaimsAppealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

- 1 Claims 1-19 are presented for examination.
 - 2 The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- 3 Claims 1-19 are rejected under 35 U.S.C. § 102(e) as being anticipated by

Ellis [USP 5,719,882]

- 4 As per claim 1, Ellis discloses a method for operating a communication system [Ellis, a communication network, col 1 lines 5-8], comprising the step of

transmitting the first information frame [Ellis, col 2 lines 5-33; hub manager keeps a statistic and other variables regarding each network device, transmitted and stored at each network device, col 5 lines 9-15];

selectively receiving a first response in response to transmission of the first information frame [Ellis, col 2 line 5-35; select an initial value for response, col 5 lines 9-15, 57-63];

measuring a first amount of time between transmission of the first information frame and receipt of the first response [Ellis, the maximum response time is measured from the time a message is sent to a network device until the time a response is received from the network device, col 5 lines 25-39]; and

selectively modifying a response time value in response to the first amount of time [Ellis, adjustment to retry number, col 6 lines 29-45] wherein said step of measuring a first amount of time between transmission of the first information frame and receipt of the first response uses a timer operating in response to a clock, and wherein said response time value is a response time value of said timer [Ellis taught a counter is stored which keeps track of successful response from network device and the hub manager calculates the time between retries for each network device wherein the maximum response time is set to some initial value (i.e.: 3 seconds), col 5 lines 25-40, 56-62. It was clearly that a timing device has been used to measure or calculate the initial value].

5 As per claim 7, Ellis discloses a method for operating a communication system [Ellis, a communication network, col 1 lines 5-8], comprising the step of:

transmitting the first frame of information [Ellis, a first message sent from the first device, col 1 lines 52-col 2 line 33];

initiating operation of timer with a first response time [Ellis, receive the response to the first message, when the first response time is maximum for response time messages sent from the first network, the retry time for second network device is set equal to an amount greater than the first response time, col 2 lines 5-33; initially, the maximum response time is set to some value, col 5 lines 56-63];

determining when a first query response has been received [Ellis, the maximum response time is measured from the time a message is sent to a network device until the time a response is received from the network device, col 5 lines 25-39]; and

selectively incrementing the first response time [Ellis, calculating retry time whenever the response time is a maximum, col 6 lines 15-22] when the first query response has been received [Ellis taught a counter is stored which keeps track of successful response from network device and the maximum response time is set to some initial value, col 5 lines 25-40, 56-62].

6. As per claims 2 and 8, Ellis discloses incrementing an initial response time value by a timer resolution value, to form the response time value [Ellis, initially, the maximum response time is set to some value, col 5 lines 56-63].

7 As per claim 17, Ellis discloses a first data processing for communicating with a second data processing system [Ellis, a communication network, col 1 lines 5-8], comprising:

interface means for transmitting the first information frame and for selectively receiving a first response in response to transmission of the first information frame [Ellis, a first message sent from the first device, col 1 lines 52-col 2 line 33];

a timer for measuring (i.e.:calculating) a first amount of time between transmission of the first information frame and receipt of the first response, the timer being coupled to the interface means [Ellis, the maximum response time is measured from the time a message is sent to a network device until the time a response is received from the network device, col 5 lines 25-39. It was clearly a timer has been used to provide a time for measuring and calculating a response time]; and

a central processing unit (i.e.: management station) coupled to the timer for selectively modifying (i.e.: adjustment) a response time value in response to the first amount of time [Ellis, Fig 2, col 2 lines 5-65; Retrytime is set to twice response time, Fig 4 col 5 line 56-col 6 line 22; next contact attempt, making further adjustment, Fig 5, lines 24-67].

8 As per claims 3 and 16, Ellis discloses incremented up to a maximum response time value [Ellis, receiving a response is greater than the stored value of MAXTIME, col 5 line 64-col 6 line 10]

9. As per claims 4 and 14, Ellis discloses the initial response time value is a default value or some initial value [Ellis, initially, the maximum response time is set to some value, col 5 lines 56-63].

10. As per claims 5,15 Ellis discloses the response time approximates an amount of time the communication system requires to transfer the first information

frame between a first data processing system and a second data processing system [Ellis, the retry time is set equal to a weight average of the current retry time,col 2 lines 5-34].

11. As per claims 6,19 Ellis discloses the response time value is dynamically modifiable in response to the first amount of time [Ellis, hub manager making adjustments to Retry number, col 6 lines 29-45].

12. As per claim 9, Ellis discloses setting a transmit sequence value when the first frame of information is transmitted; initiating operation of a response timer when the first information frame is transmitted; comparing (i.e.calculating) the transmit sequence value and a receive sequence value (i.e.: consecutive successful responses) when the first response is received; and idling operation of the response timer (i.e.: timeout) when the transmit sequence value corresponds to the receive sequence value [Ellis, timeouts and status of the network devices, col 5 lines 25-55].

13. As per claim 10, Ellis discloses restarting operation of the response timer when the transmit sequence value differs from the receive sequence value [Ellis, RETRYTIME is incremented twice, col 6 lines 59-67].

14. As per claim 11, Ellis disclose transmitting a second information frame [Ellis response#+1, Fig 5]; selectively receiving a second response in response to transmission of the second information frame; measuring a second amount of time between transmission of the second information frame and receipt of the second response [Ellis, response#=1000, Fig 5]; and selectively initializing a query timer with a

maximum response time value [Ellis, the initial value may be three seconds, col 5 lines 60].

15. As per claims 12 and 13, Ellis disclose selectively modifying the response time value to correspond to a residual time value remaining in a response timer after the second amount of time has passed and the response time value is selectively modified to equal the residual time value plus a timer resolution value as the inherent features of the adjustable time based on the calculated formula [Ellis, the currently calculated time used between retries, col 5 line 25-40; making additional modifications to RETRYTIME, col 6 lines 10-15; making further adjustment, col 6 lines 23-45].

16. As per claim 18, Ellis discloses the central processing unit dynamically modifies the response time value in response to the first amount of time [Ellis for calculating RETRYTIME, whenever RESPONSETIME is a maximum, RETRYTIME is set to twice RESPONSETIME, col 6 lines 15-22].

(11) Response to Argument

(A) Applicant argues the prior art does not disclose "measuring a first amount of time between transmission of the first information frame and receipt of the first response uses a timer operating in response to a clock, and wherein said response time value is a response time value of said timer" as recited in claim 1. Examiner points out that the prior art discloses the maximum response time is calculated from the time a message is sent to a network device until the time a response is received from the network device, the currently calculated time used between retries is stored [Ellis the

currently calculated time used between retries, col 5 line 25-40]. Thus, it is clearly the system has a timer or timing mechanism which has been used to setup a initial value or the maximum time frame for the sending a request and calculate the response time from the network device.

(B) Applicant argues the prior art does not disclose "initiating operation of a timer with a first response time" as recited in claim 7. Examiner points out the prior art disclose "initially, the maximum response time is set to some initial value" [Ellis col 5 lines 56-63]. It is clearly the maximum value of response time is set to an initiated value by, inherently, using timing mechanism or a timer.

(C) Applicant argues the prior art does not disclose "selectively incrementing the first response time when the first query response has been received" as recited in claim 7. Examiner notes that the prior art discloses making adjustments to RETRY. If a response is received, the counter RESPONSE# is incremented [Ellis, the counter RESPONSE# is incremented, col 6 lines 36-37]. It is clearly the system has based on the first response to calculate or adjust to retry with an increment value.

(D) Applicant argues the prior art does not disclose "a timer for measuring a first amount of time between transmission of the first information frame and receipt of the first response, the timer being coupled to the interface means" as recited in claim 17. Examiner interprets the counter as an electronic device (i.e.: timer) which measures

the response time and retry times based on timing (e.g.100 ms) and connected to other interface devices to transfer the signal [Ellis, for each network device, a counter is stored which keep track of successful responses from the network devices, col 5 lines 25-40, col 6 lines 45-58].

(E) Applicant argues the prior art does not disclose “a central processing unit couple to the timer for selectively modifying a response time value in response to the first amount of time” as recited in claim 17. Examiner notes that the CPU and timer are essential elements which are well-known and inherently exist in all computer network device including the management station with hub manager [Ellis, hub manager 60, Fig 2].

Thus, as explained above, claims 1,7,17 are anticipated by the prior art.

(F) Applicant argues the prior art does not disclose “incrementing an initial response time value by a timer resolution value, to form the response time value” as recited in claims 2 and 8. Examiner points out the prior art disclose the incrementing an initial response time value by a timer resolution value such as a sporadic delay time [Ellis, sporadic long delay, col 6 lines 46-58].

(G) Applicant argues the prior art does not disclose “wherein the initial response time value is incremented up to a maximum response time value” as recited in claims 3 and 16. Examiner interprets the initial response time value is incremented up to

a maximum response time value is equivalent to the maximum response time is set to some initial value wherein the initial value may be three seconds [Ellis, the initial value may be three seconds, col 5 lines 60].

(H) Applicant argues the prior art does not disclose "setting sequence value when the first frame of information is transmitted" as recited in claim 9. Examiner points out the prior art disclose that the retry time or sequence value is weighted by a given formula [Ellis, the average is weighted so the RETRYTIME is given by the formula, col 6 lines 5-10].

(I) Applicant argues the prior art does not disclose "comparing the transmit sequence value" as recited in claim 9. Examiner points out the prior art disclose that the retry time or sequence value is weighted or compared by a given formula [Ellis, the average is weighted so the RETRYTIME is given by the formula, col 6 lines 5-10].

(J) Applicant argues the prior art does not disclose "idling operation of the response timer when the transmit sequence value corresponds to the receive value" as recited in claim 9. Examiner points out the prior art disclose that the maximum response time is set to some initial value wherein the initial value may be three seconds [Ellis, the initial value may be three seconds, col 5 lines 60].

(K) Applicant argues the prior art does not disclose "restarting operation of the response timer when the transmit sequence value differs from the receive sequence value" as recited in claim 10. Examiner points out the prior art disclose that the hub manager waits for the next contact attempt (or restarting operation) before making further adjustment which means if the next transmit sequence value is differs from the previous values (receive sequence value) and the value response is incremented [Ellis the hub manager does not receive response and timeout occurs, then the retry # is incremented, col 6 lines 30-45].

(L) Applicant argues the prior art does not disclose "selectively initializing a query timer with a maximum response timer value" as recited in claim 11. Examiner points out the prior art disclose that the maximum response time is set to some initial value wherein the initial value may be three seconds [Ellis, the initial value may be three seconds, col 5 lines 60].

(M) Applicant argues the prior art does not disclose "selectively modifying the response timer value to correspond to a residual time value remaining in a response timer after the second amount of time has passed" as recited in claims 12 and 13. Examiner points out the prior art disclose the hub manager waits for the next contact attempt (or restarting operation) before making further adjustment which means if the next transmit sequence value is differs from the previous values (receive sequence

value) and the value response is incremented [Ellis the hub manager does not receive response and timeout occurs, then the retry # is incremented, col 6 lines 30-45].

(N) Applicant argues the prior art does not disclose "wherein the central processing unit dynamically modifies the response time value in response to the first amount of time" as recited in claim 18. Examiner points out the prior art disclose that the CPU has been programmed to adjust the response time based on the first or initial value [Ellis the initial value may be three seconds, col 5 lines 56-63, initializes retry # to some value, making further adjustment, col 6 lines 23-45].

(O) Applicant argues the prior art does not disclose "means for incrementing the response timer value by pre-selected time period in response to the first amount of time" as recited in claim 19. Examiner points out the prior art disclose the response timer value is increased by pre-selected time period based on a given formula [Ellis, the average is weighted so the RETRYTIME is given by the formula, col 6 lines 5-10].

Claims 2-6,8-16 and 18-19 recite combinations of features including the above described elements which are clearly shown in the reference, thus they are anticipated by the prior art.

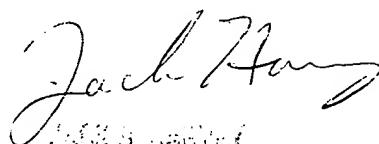
Examiner has considered all of applicant arguments.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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SUPERVISORY PATENT EXAMINER.

March 16, 2004



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